

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

RED APPLE 86 FLEET PLACE  
DEVELOPMENT, LLC

Plaintiff,

-against-

STATE FARM FIRE AND CASUALTY  
CO., and ALE SOLUTIONS, INC.

Defendants.

22-cv-5582 (JSR)

ORDER

JED S. RAKOFF, U.S.D.J.

On August 31, 2022, defendant State Farm and Casualty Co. ("State Farm") moved to dismiss counts two through five of Red Apple 86 Fleet Place Development, LLC's ("Red Apple") Complaint, ECF No. 1, Ex. 1. That same day, co-defendant ALE Solutions, Inc. filed a motion for judgment on the pleadings as to the claims brought against it in the Complaint. Oral argument was held on both motions on November 7. During that hearing, the Court indicated that the counts at issue were insufficiently pled in their current state, but allowed the plaintiff to move for leave to amend the Complaint to correct these deficiencies. Red Apple so moved on November 14 and State Farm filed its opposition to that motion on November 21.


Upon due consideration, the Court finds that the amended Complaint would not cure the deficiencies previously referenced

during oral argument and that, therefore, the motion for leave to amend is denied as "futile." See Ferring B.V. v. Allergan, Inc., 4 F. Supp. 3d 612 (S.D.N.Y. 2014); see also Pyskaty v. Wide World of Cars, LLC, 856 F.3d 216, 224-25 (defining futility as "a determination . . . that proposed amendments would fail to cure prior deficiencies or to state a claim under Rule 12(b)(6)"). The renewed motion of State Farm to dismiss counts two to five of the original Complaint is therefore granted. In addition, neither the original Complaint nor the amended Complaint makes out an adequate claim against ALE Solutions, Inc. Its motion for judgment on the pleadings is therefore granted, and it is dismissed from this case. The Court will issue an opinion setting forth the reasons for these rulings in due course.

The case against the remaining defendant State Farm will continue with respect to count one only, according to the schedule set by the previous case management plan, ECF No. 12. The Clerk of the Court is directed to close documents numbered 19, 22, and 33 on the docket of this case.

SO ORDERED.

Dated: New York, NY  
November 25, 2022

  
JED S. RAKOFF, U.S.D.J.